

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 1 August 2024

**Public Authority:** Ministry of Defence  
**Address:** Whitehall  
London  
SW1A 2HB

#### Decision (including any steps ordered)

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1. The complainant submitted a request to the Ministry of Defence (MOD) seeking copies of operational directives concerning UK armed forces personnel embedded with other forces. The MOD explained that it had previously provided the complainant with copies of the requested documents with information being redacted on the basis of sections 23(1) (security bodies), 24(1) (national security), 26(1)(b) (defence), 27(1)(a) and (c) (international relations) of FOIA. The MOD explained that its position had not changed in relation to the withheld information and it remained of the view that it was still exempt on the basis of these exemptions.
2. The Commissioner's decision is that the withheld information is exempt on the basis of sections 23(1), 26(1)(b) and 27(1)(a) and (c) of FOIA.
3. The Commissioner does not require further steps.

#### Request and response

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4. The complainant submitted the following request to the MOD on 4 May 2023:  
"Please provide  
1. Unredacted PDF copies of CDS Directive 09/14 and CDS Directive 02/16.

2. A dated list of subsequent versions of this CDS Directive with number of pages for each.
3. A PDF copy of the current version of this document if subsequent versions have been issued.

Please note that it has been over three years since the last FOIA request related to this document (FOI2019 12673) and 12 months since any disclosures were made. (Note 1)

The public interest in disclosure of the material previously redacted has become greater in light of further evidence of UK involvement in US lethal drone strikes and the disclosures by the New York Times (Note 2), and Airwars (Note 3), that civilian casualties caused by them have been greatly misrepresented.

(1)<https://www.whatdotheyknow.com/request/c...> (accessed 04/05/2023)

(2)<https://www.nytimes.com/spotlight/the-ci...> (accessed 04/05/2023)

(3)<https://airwars.org/news> (accessed 04/05/2023)"

5. The MOD provided him with a substantive response to his request on 31 July 2023. The MOD explained that:

"Copies of CDS Directive 09/14 and 02/16 were provided to you previously under our file reference FOI2019/12673 and the subsequent decision with ICO case reference IC-97823-Z3F4. This request, and subsequent review, has provided all releasable information pursuant to your request in accordance with the act. For completeness I have conducted a renewed Public Interest Test (PIT) for the requested information and reconsidered the points from the previous PIT. The balance of public interest remains in withholding information. CDS Directive 02/16 remains the current version of the document. The exemptions applied in this version remain extant."

6. The response went on to confirm that the exemptions being applied to this request were sections 23(1), 24(1), 26(1)(b), 27(1)(a) and 27(1)(c) of FOIA.<sup>1</sup>

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<sup>1</sup> Sections 23 and 24 were cited in the alternative which means that although only one exemption is engaged the other one is also cited so as to disguise which exemption is in fact being relied upon. This approach may be necessary in instances where citing one exemption would in itself be harmful. Further information on this issue is contained in the

7. In response to the complainant's public interest arguments, the MOD advised that there had been no significant material changes to how it conducts operations between his previous request (dated 5 November 2019) and the date of his present request.
8. The complainant contacted the MOD on 17 August 2023 and asked it to conduct an internal review of its application of these exemptions.
9. The MOD informed him of the outcome of the internal review on 19 July 2024. It confirmed that it remained of the view that all releasable information had been disclosed from these documents and that the remaining information was exempt from disclosure on the basis of the exemptions cited in the refusal notice. The MOD did clarify however that the exemptions contained at sections 23(1) and 24(1) were not being cited in the alternative, but were being applied to separate pieces of information. With regard to questions 2 and 3 of the request the MOD advised that there have been no other subsequent versions of this Directive and as such no information is held in the scope of these elements of the request.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 24 February 2024 in order to complain about the MOD's handling of his request. He disputed the application of the exemptions cited by MOD. He was also dissatisfied with its failure, at that point, to complete the internal review.

### **Reasons for decision**

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11. As indicated by the MOD's response to the complainant quoted above, redacted copies of CDS Directive 09/14 and 02/16 had previously been provided to him in response to a previous request. The application of exemptions to these redactions was, again as indicated by the MOD's response, the subject of decision notice IC-97823-Z3F4.<sup>2</sup>

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Commissioner's guidance <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/how-sections-23-and-24-interact/#>

<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021561/ic-97823-z3f4.pdf>

12. In that notice the Commissioner found that redacted information was exempt from disclosure on the basis of sections 23(1), 26(1)(b) and 27(1)(a) and (c) of FOIA.
13. The Commissioner notes the complainant's position that in view of the developments cited in his request the public interest now tips in favour of disclosing the information. The Commissioner appreciates the severity of the allegations highlighted by complainant in his request and he would accept that these arguably add to the public interest in disclosure. However, having reviewed his previous decision the Commissioner remains of the view that the balance of the qualified exemptions favours withholding the information to which these have been applied.
14. In reaching this conclusion, despite the arguably greater public interest in disclosure, the Commissioner would emphasise, in respect of section 26, the importance of ensuring that the capability, effectiveness or security of UK armed forces are not undermined, particularly given that the risk of prejudice from disclosure of the information is not simply to particular operations in the future, but potentially all operations, including peace keeping ones. In respect of section 27 the Commissioner remains of the view that there is greater public interest in the UK being able to maintain effective relations with other states, specifically in respect of operational relations between armed forces. The Commissioner would again highlight, as he did in the previous request, that the redactions made to the document are minimal and that as a result the information already disclosed provides considerably insight. Therefore, the Commissioner's decision in respect of the qualified exemptions remains the same as set out in his previous decision notice. He is therefore satisfied that the parts of CDS Directive 09/14 and 02/16 which were not previously provided to the complainant in response to his previous request remain exempt on the basis of sections 23(1), 26(1)(b) and 27(1)(a) and (c) of FOIA.

## **Other Matters**

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15. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe.<sup>3</sup> The Commissioner expects that most internal reviews should be completed within 20 working days, and even for more complicated

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<sup>3</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

requests, reviews should be completed within a total of 40 working days.<sup>4</sup>

16. In this case, as noted above, the MOD failed to meet these timescales as it took approximately 11 months to complete the internal review, a review which was only completed during the course of the Commissioner's investigation of this complaint.

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<sup>4</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

## Right of appeal

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17. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

18. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**